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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,151	01/19/2006	Takao Wada	P1470US	8099
1218	7590	11/23/2009	EXAMINER	
CASELLA & HESPOS 274 MADISON AVENUE NEW YORK, NY 10016			CAILLOUET, CHRISTOPHER C	
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			1791	
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			11/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,151

Applicant(s)

WADA ET AL.

Examiner

CHRISTOPHER C. CAILLOUET

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 8-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3 and 8-14 is/are allowed.
- 6) ☒ Claim(s) 15-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Examiner: Caillouet

November 13, 2009

DISPOSABLE WEARING ARTICLE

1. The Amendment filed July 14, 2009 has been entered. Claims 15 and 20 were amended, claim 29 was cancelled.
2. The sections of Title 35, U.S. Code not included in this action can be found in prior Office action.

Claim Rejections - 35 USC § 102

3. The amendments to claims 15 and 20 have overcome the 102(b) rejections of the Non-Final Office action mailed on April 22, 2009. The 102(b) rejections of claims 15, 17-20 and 22-28 has been withdrawn.

Claim Rejections - 35 USC § 103

4. Claims 15, 17-20 and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo et al (US 6827804).

As to claims 15, 25 and 28, Otsubo teaches a method of making a disposable diaper (Abstract). As seen in Figures 2 and 5, Otsubo discloses a method that comprises of steps of forming a composite web by laminating elastic members ('64', '66', '73', '74') in between two web materials ('61', '70'); cutting the composite web ('75') in a length direction so that a concave portion ('77') and a convex portion ('78') appear alternately, thus cutting both the outer and the inner surface webs; a step of attaching an absorber ('55') to bridge between cut first web and second web; a step of widening ('54') the first composite web and the second composite web to which the absorber is

attached ('55'). Otsubo discloses that the elastic members are applied to the web in an extended state (column 4, lines 45-51). Otsubo discloses that the web is cut to define straight cut edges (Figure 5).

Otsubo fails to disclose whether the elastics may be laminated between the two web materials after a cut has been made in each web and the webs are spaced apart. It is the position of the Examiner that rearranging the process steps of Otsubo to laminate the stretched elastics after the two webs have been cut and separated from one another would have been obvious to one of ordinary skill at the time of the invention. Selection of any order of performing process steps is *prima facie* obvious in the absence of new and unexpected results. *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946).

As to claim 17, Otsubo discloses a method wherein elastic members are inserted into a disposable wearing article. As seen in Figure 2, waist/body elastic members ('64', '66') and leg peripheral elastic members ('73' and '74') are attached to the web (column 4, lines 38-50).

As to claim 18, Otsubo discloses a step where composite web is folded upon itself and the first and second web components are sealed (column 5, lines 34-39; Figure 2, '57').

As to claims 19 and 26, the methods of claims 15 and 25, respectively, are taught as seen above. Otsubo discloses a step wherein leg openings are formed in the disposable wearing article (Figure 2, '56'; Figure 1, '41').

As to claims 20 and 27, Otsubo teaches a method of making a disposable diaper (Abstract). As seen in Figures 2 and 5, Otsubo discloses a method that comprises of steps of forming a composite web by laminating elastic members in an extended state ('64', '66', '73', '74'; column 4, lines 45-51) in between two web materials ('61', '70); cutting the composite web ('75') in a length direction so that a concave portion ('77') and a convex portion ('78') appear alternately, thus cutting both the outer and the inner surface webs; and a step of attaching an absorber ('55') to bridge between cut first web and second web. Otsubo further discloses a step wherein leg openings are formed in the disposable wearing article (Figure 2, '56'; Figure 1, '41').

Otsubo fails to disclose whether the elastics may be laminated between the two web materials after a cut has been made in each web and the webs are spaced apart. It is the position of the Examiner that rearranging the process steps of Otsubo to laminate the stretched elastics after the two webs have been cut and separated from one another would have been obvious to one of ordinary skill at the time of the invention. Selection of any order of performing process steps is prima facie obvious in the absence of new and unexpected results. *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946).

As to claim 22, Otsubo discloses a method wherein elastic members are inserted into a disposable wearing article. As seen in Figure 2, waist/body elastic members ('64', '66') and leg peripheral elastic members ('73' and '74') are attached to the web (column 4, lines 38-50).

As to claim 23, the method of claim 20 is taught as seen above. Otsubo discloses a step where composite web is folded upon itself and the first and second web components are sealed while the absorber is in a folded state (column 5, lines 34-39; Figure 2, '57').

5. Claims 16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo et al (US 6827804) as applied to claims 28 and 27 respectively above, and further in view of Thorson et al. (US 6979380).

The methods of claims 28 and 27 are taught as seen above. Otsubo does not teach to shift the cut webs so that the concave portions of the respective webs oppose each other. Thorson teaches a method of manufacturing disposable undergarments (abstract). Thorson teaches that a web material is cut along the longitudinal direction thereby making webs that will be the front and rear panel of a diaper, each having a maximum and minimum rise respectively; shifting at least one of said rear and front body panels so that the maximum rises (concave portions) are aligned; and connecting an absorber to the webs, bridging the gap therein (column 15, lines 32-58). Thorson teaches that this method allows for flexibility in manufacturing different size garments (column 1, lines 49-52).

It would have been obvious to one of ordinary skill in the art to incorporate the teachings of Thorson onto the method of Otsubo because Thorson's method allows for flexibility in manufacturing different size garments (column 1, lines 49-52).

Allowable Subject Matter

6. Claims 1, 3, 8-14 are allowable.
7. The following is an examiner's statement of reasons for allowance: The claims recite a method for manufacturing a disposable wearing article wherein a web of material is cut into two separate webs; a cover sheet is attached to a first and second web of material and then said webs are spaced apart from one another thus expanding said cover sheet so that it is ready for an absorber to be attached to said cover sheet. The closest prior art of Otsubo does not teach the claimed method step of attaching a cover sheet in a contracted state to the webs of material and then expanding said cover sheet as the webs of material are spaced apart from one another. Otsubo discloses a method wherein a web of material is cut into two separate webs; the webs are spaced apart from one another; a cover sheet with absorber pad is then attached to the webs across the space between said webs.

The following references are considered relevant art but do not make up for the deficiencies of Otsubo: Igaue et al. (US 5858151) discloses a process for forming a disposable garment; Otsubo et al (US 6837958) discloses a method of forming a disposable garment.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

8. Applicant's arguments filed July 14, 2009 have been fully considered but they are not persuasive.

9. Applicant argues on page 12 of the Remarks that Otsubo et al. fails to disclose cutting the two material webs, separating the webs, and then laminating the webs together with a stretched elastic therebetween, as is currently claimed in claims 15 and 20. As stated in the rejection above, Examiner acknowledges that Otsubo fails to disclose the claimed, but rearrangement of the process steps in the method of Otsubo would have been obvious to one of ordinary skill in the art at the time of the invention.

Applicant further argues on page 12 of the Remarks that the method of Otsubo causes wrinkles and creases to occur easily in the two webs. Examiner assumes, in *arguendo*, that Applicant is arguing that the step of cutting and separating the inner and outer webs prior laminating elongated elastics therebetween to form two composite webs separated from one another would result in no wrinkles and creases in the web. Examiner would point out that the feature upon which applicant relies (suppression of wrinkles in the first and second elastic laminated body) are not recited in the rejected claim(s). Applicant discloses in paragraphs 101 and 102 of the specification that wrinkles are suppressed in the convex portions of the if the outer surface only if said web has a constant width in the width direction of the web. Claims 15 and 20 have no limitations which require that the outer web have a constant width while the inner web has varying widths.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CHRISTOPHER C. CAILLOUET** whose telephone number is (571)270-3968. The examiner can normally be reached on Monday - Thursday; 9:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher C Caillouet/
Examiner, Art Unit 1791

/Mark A Osele/
Primary Examiner, Art Unit 1791
November 19, 2009